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PULL'R HOLDING COMPANY, LLC
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 CUSTOM LEATHERCRAFT MFG.
CO., INC., a California corporation,
16

Plaintiff,

17 vs.
18

PULL'R HOLDING COMPANY, LLC,
a Delaware limited liability company;
and DOES 1 to 5,
20

Defendant.

22 PULL'R HOLDING COMPANY, LLC,
a Delaware limited liability company
23

Counterclaimant,

24 vs.
25

CUSTOM LEATHERCRAFT MFG.
CO., INC., a California corporation,
27

Counterdefendant.

Case No. CV10-2399 JST (PLAx)

**STIPULATED PROTECTIVE
ORDER**

****NOTE CHANGES MADE BY
COURT TO STIPULATED
PROTECTIVE ORDER****

ORDER

Having reviewed the Stipulation re Proposed Protective Order as provided by counsel for the parties and attached hereto,

IT IS SO ORDERED.

SIGNED this 4th day of April, 2011.

Paul L. Abramst

Paul L. Abrams

UNITED STATES MAGISTRATE JUDGE

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**STIPULATION RE [PROPOSED]
PROTECTIVE ORDER**

STIPULATED PROTECTIVE ORDER

GOOD CAUSE STATEMENT

4 WHEREAS, the parties believe that good cause exists for issuing this
5 protective order pertaining to the documents or information described in this Order
6 because the parties in this case are direct competitors and, based on the claims in
7 this case, the nature of the information that will be required to be disclosed will
8 include non-public, proprietary, and commercially sensitive information which, if
9 access and use is not appropriately limited, could be used to the detriment of one
10 party by the other, and by other competitors;

11 WHEREAS, the parties to this action believe that in the course of this Action
12 certain information is likely to be disclosed and produced that constitutes trade
13 secrets or other confidential research, development, or commercial information
14 within the meaning of Rule 26(c) of the Federal Rules of Civil Procedure; and

15 WHEREAS, the parties desire to limit the extent of disclosure and use of such
16 confidential material from unauthorized use and/or further disclosure, and wish to
17 ensure that no advantage is gained by any party by the use of such confidential
18 material which could not have been learned had discovery in this litigation not
19 occurred.

20 WHEREAS, each of the parties believes that entry of a Protective Order
21 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure would serve its
22 interests; and

23 WHEREAS, the Court finds that good cause exists for the entry of this
24 Protective Order in this Action pursuant to Rule 26(c) of the Federal Rules of Civil
25 Procedure in order to protect trade secrets and other confidential research,
26 development, or commercial information.

27 IT IS HEREBY STIPULATED, AGREED AND ORDERED, pursuant to
28 Rule 26(c) of the Federal Rules of Civil Procedure, that this Protective Order shall

1 govern the production and/or disclosure by any party or non-party (the “Producing
2 Party”) in this Action, including, without limitation, Rule 26 disclosures,
3 documents, depositions, deposition exhibits, interrogatory responses, responses to
4 requests for admission, and testimony (such information shall hereinafter be referred
5 to as “Discovery Material”) and the handling of all such information produced or
6 disclosed to any party (the “Receiving Party”).

7 1. This Protective Order shall apply to all information and documents,
8 electronic documents, things, discovery responses and testimony designated in good
9 faith, and with a reasonable basis, by parties and non-parties to this litigation,
10 including documents produced prior to the entry of this Order as either: (1)
11 “CONFIDENTIAL” or (2) “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
12 ONLY,” under the terms of this Protective Order.

13 2. Any Producing Party may designate any Discovery Material as
14 “CONFIDENTIAL” (“Confidential Discovery Material”) under the terms of this
15 Protective Order if such party in good faith, and with a reasonable basis, believes
16 that such Discovery Material contains nonpublic confidential, proprietary,
17 commercially sensitive, or trade secret information relating to research for and
18 production of current products, technical, business and research information
19 regarding future products, highly sensitive financial information and marketing
20 plans and forecasts, customer lists, pricing data, cost data, customer orders,
21 customer quotations, and any non-public pending or abandoned patent applications,
22 either foreign or domestic. In such case, a party shall have the right to designate and
23 mark documents as being “CONFIDENTIAL,” if such documents or information
24 relate to proprietary information that the producing party reasonably believes is of
25 such nature and character that **disclosure of such information to the public** would
26 be harmful to the Producing Party.

27 3. Any Producing Party may designate any Discovery Material as
28 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” (“Highly

1 Confidential Discovery Material") under the terms of this Protective Order if such
2 party in good faith, and with a reasonable basis, believes that such Discovery
3 Material contains highly confidential material which comprises highly sensitive
4 technical information relating to research for and production of current products,
5 technical, business and research information regarding future products, highly
6 sensitive financial information and marketing plans and forecasts, customer lists,
7 pricing data, cost data, customer orders, customer quotations, and any non-public
8 pending or abandoned patent applications, either foreign or domestic. In such case,
9 a party shall have the further right to designate and mark documents as being
10 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY," if such documents
11 or information relate to proprietary information that the producing party reasonably
12 believes is of such nature and character that **disclosure of such information to the**
13 **other party of record** would be harmful to the Producing Party.

14 4. CONFIDENTIAL and HIGHLY CONFIDENTIAL -- ATTORNEYS'
15 EYES ONLY Discovery Material and information derived therefrom shall be used
16 solely for purposes of this Action and shall not be used for any other purpose,
17 including, without limitation, any business, proprietary, commercial, governmental,
18 or litigation purpose.

19 5. The designation of Discovery Material as "CONFIDENTIAL" or
20 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" for purposes of this
21 Protective Order shall be made in the following manner by the Producing Party:

22 a. In the case of Rule 26 disclosures, documents, exhibits, briefs,
23 memoranda, interrogatory responses, responses to requests for admission, or other
24 documentary materials (excluding depositions or other testimony) and tangible
25 things by affixing the legend "CONFIDENTIAL" to each thing and each page
26 containing any Confidential Discovery Material and affixing the legend "HIGHLY
27 CONFIDENTIAL -- ATTORNEYS' EYES ONLY" to each page containing Highly
28 Confidential Discovery Material. When a Producing Party produces documents or

1 other tangible things for inspection, no marking need be made by the Producing
2 Party in advance of the inspection. For purposes of such inspection, all documents
3 and tangible things produced shall be considered marked as "HIGHLY
4 CONFIDENTIAL -- ATTORNEYS' EYES ONLY." Thereafter, upon selection of
5 specified documents or things for copying by the Receiving Party, the Producing
6 Party shall mark the copies of such documents and things with the appropriate
7 confidentiality marking at the time that the copies are produced to the Receiving
8 Party.

9 b. In the case of depositions or other testimony, (i) by a statement
10 on the record by counsel during such deposition or other testimony or portion
11 thereof that such testimony shall be treated as Confidential or Highly Confidential
12 Discovery Material, or (ii) by written notice to all parties sent by counsel within
13 twenty (20) business days after the written transcript is made available to that
14 counsel. In the foregoing instance where testimony is designated Highly
15 Confidential, each party shall affix to all originals and copies of transcripts in its
16 possession or control the appropriate confidentiality legend.

17 c. In the case of information made available during an inspection of
18 premises, all such information shall be deemed "HIGHLY CONFIDENTIAL --
19 ATTORNEYS' EYES ONLY." Counsel for the Receiving Party shall be
20 responsible for arranging to have the "HIGHLY CONFIDENTIAL --
21 ATTORNEYS' EYES ONLY" legend affixed to all notes, drawings, photographs,
22 videotapes or other documents and copies or portions thereof made at or as a result
23 of the inspection and shall provide counsel for Producing Party with copies of all
24 such drawings, videotapes, photographs, or other documents with ten (10) business
25 days of the visit.

26 d. The inadvertent or unintentional disclosure by the Producing Party of
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
28 ONLY" information either by way of document production or deposition testimony,

1 regardless of whether the information was so designated at the time of disclosure,
2 shall not be deemed a waiver in whole or in part of a party's claim of confidentiality
3 as to the information disclosed. Any such inadvertently or unintentionally disclosed
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
5 ONLY" information, not designated as such pursuant to paragraph 2, 3 or 5, shall be
6 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
7 ATTORNEYS' EYES ONLY" as soon as reasonably possible after the Producing
8 Party becomes aware of the inadvertent or unintentional disclosure. The Receiving
9 Party shall thereafter mark, and treat the materials as "CONFIDENTIAL" or
10 "HIGHLY CONFIDENTIAL" as appropriate, and such materials shall be fully
11 subject to this Protective Order as if they had been initially so designated.

12 6. Discovery Material designated "CONFIDENTIAL" may be disclosed,
13 summarized, described, or otherwise communicated or made available in whole or
14 in part only to the following:

15 a. counsel of record for the parties in this Action, members of their
16 firms, associate attorneys, paralegal, clerical and other regular or temporary
17 employees of counsel necessary to assist in the conduct of this Action for use in
18 accordance with this Protective Order;

19 b. the Receiving Party, but only as necessary to provide assistance
20 in the conduct and evaluation of this Action;

21 c. outside consultants, experts, or non-technical jury or trial
22 consulting services ("Consultants") retained by a party in this Action provided that
23 any Consultant who is employed in the work gear industry ("Industry Consultant")
24 shall be identified by delivering to the Producing Party the name, address and a
25 curriculum vitae of the Industry Consultant in writing at least seven (7) business
26 days prior to any disclosure of Discovery Material designated "CONFIDENTIAL"
27 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." During such
28 seven (7) day period, opposing counsel may object to the disclosure of the

1 designated material to the identified Industry Consultant and such objection shall
2 bar the disclosure of the designated material to that person until the parties agree
3 otherwise or until the Court rules otherwise;

4 d. the Producing Party;

5 e. third parties who authored, created or received the document;

6 f. any person indicated on the document as being the creator,

7 author, sender or recipient of the material;

8 g. the Court, court personnel and court reporters;

9 h. outside photocopying, imaging, data base, graphics or design
10 services retained by outside counsel for purposes of preparing demonstrative or
11 other exhibits for deposition, trial, or other court proceedings in this Action;

12 i. other persons only upon Order of the Court for good cause

13 shown or upon written stipulation of the Producing Party.

14 7. Discovery Material designated “HIGHLY CONFIDENTIAL --
15 ATTORNEYS’ EYES ONLY” may be disclosed, summarized, described or
16 otherwise communicated or made available in whole or in part only to those
17 individuals in sub-paragraph 6(a), (c), (d), (e), (f), (g), (h) and (i).

18 8. Each person to be given access to Highly Confidential Discovery
19 Material (collectively “Material”) pursuant to this Protective Order listed in sub-
20 paragraphs 6(c) and 6(i) shall be provided with a copy of this Protective Order and
21 shall be advised that (a) the Material is being disclosed pursuant to and subject to
22 the terms of this Protective Order and may not be disclosed or used other than
23 pursuant to the terms hereof, and (b) that the violation of the terms of the Protective
24 Order (by use of the Material in any impermissible manner) may subject the person
25 to punishment for contempt of a Court Order. Any such person to be given access
26 to Material must first read the Protective Order, and must execute, in the form
27 attached hereto as Exhibit A, an Undertaking to be bound by this Order and to be
28 subject to the jurisdiction of this Court for purposes of the enforcement of this

1 Order. The original Undertaking shall be retained by counsel giving access to the
2 Material. If Material is to be disclosed during a deposition or trial, the agreement to
3 be bound and subject to jurisdiction may be made on the record and under oath,
4 rather than in writing, and any objections may also be made orally. Pending
5 resolution of such objections, no disclosures of Material may be made.

6 9. If "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
7 ATTORNEYS' EYES ONLY" information is to be the subject of examination in
8 deposition of non-party witnesses not previously entitled to access thereto under
9 paragraphs 6 or 7, the following procedures shall apply. "CONFIDENTIAL" or
10 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" information shall
11 not be provided to any such person without (a) the Producing Party's prior written
12 consent or oral consent during a deposition on the record, or (b) order of the Court
13 upon motion and notice. After receiving such consent, the party seeking to use the
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
15 ONLY" information during a deposition shall obtain an Undertaking in the form
16 attached as Exhibit A. Neither prior consent nor an Undertaking is required if the
17 witness is a present or former employee or consultant of the Producing Party, or if
18 he or she wrote or received the "CONFIDENTIAL" or "HIGHLY
19 CONFIDENTIAL -- ATTORNEYS' EYES ONLY" information during the course
20 of his or her employment or consultancy.

21 10. Should any Confidential or Highly Confidential Discovery Material be
22 disclosed, through inadvertence or otherwise, to any person or party not authorized
23 under this Protective Order, then, in addition to any penalties for violation of this
24 Protective Order to which the disclosing party may be subject, the disclosing party
25 shall use its best efforts to bind such unauthorized person to the terms of this
26 Protective Order; and the disclosing party shall: (a) promptly inform such person of
27 all the provisions of this Protective Order; (b) immediately advise the Producing
28 Party of the identity of Confidential or Highly Confidential Discovery Material so

1 disclosed and the identity of the person(s) to whom it was disclosed; (c) request such
2 person to sign an Undertaking in the form attached as Exhibit A; and (d) retrieve all
3 copies of documents and things containing the inadvertently disclosed information.
4 The executed Undertaking shall be served promptly upon the Producing Party.

5 11. In accordance with Local Rule 79.5, no document shall be filed under
6 seal without prior approval of the Court. If confidential material is included in any
7 papers to be filed in Court, such papers shall be accompanied by an application to
8 file the papers – or confidential portion thereof – under seal; **the application must**
9 **show good cause for the under seal filing.** The application shall be directed to the
10 judge to whom the papers are directed. Pending the ruling on the application, the
11 papers or portions thereof subject to the sealing application shall be lodged under
12 seal. All documents of any nature, including briefs, which contain information that
13 has been designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
14 ATTORNEYS’ EYES ONLY” or which contain Confidential or Highly
15 Confidential Discovery Material, which are to be filed with the Court, shall be filed
16 manually under seal in an envelope or other container marked with the title of the
17 Action, the title of the court filing which contains the Confidential Discovery
18 Material, and a statement substantially in the following form, or otherwise in a
19 manner consistent with the Local Rules of the District Court for the Central District
20 of California:

**CONFIDENTIAL [or "HIGHLY CONFIDENTIAL - ATTORNEYS'
EYES ONLY"]**

24 || **FILED PURSUANT TO A PROTECTIVE ORDER**

26 **THIS ENVELOPE IS NOT TO BE OPENED NOR ARE THE**
27 **CONTENTS THEREOF TO BE DISPLAYED OR REVEALED EXCEPT BY**
28 **OR TO QUALIFIED PERSONS OR BY COURT ORDER.**

1

2 12. Entering into, agreeing to, and/or producing or receiving Confidential
3 or Highly Confidential Discovery Material or otherwise complying with the terms of
4 this Protective Order shall not:

5 a. operate as an admission by any party that any particular
6 Confidential or Highly Confidential Discovery Material produced by another party
7 or non-party contains or reflects trade secrets, proprietary or commercially sensitive
8 information or any type of confidential information;

9 b. operate as an admission by any party that the restrictions and
10 procedures set forth herein constitute adequate protection for any particular
11 information deemed by any party to be Confidential or Highly Confidential
12 Discovery Material;

13 c. prejudice in any way the rights of any party to object to the
14 production of documents they consider not subject to discovery;

15 d. prejudice in any way the rights of any party to object to the
16 authenticity or admissibility into evidence of any document, testimony or other
17 evidence subject to this Protective Order;

18 e. prejudice in any way the rights of a party to seek determination
19 by the Court whether any Discovery Material should or should not be subject to the
20 terms of this Protective Order;

21 f. prejudice in any way the rights of a party to petition the Court for
22 a further protective order relating to any purportedly confidential information;
23 and/or

24 g. prevent the parties to this Protective Order from agreeing in
25 writing or on the record during a deposition or hearing in this Action to alter or
26 waive the provisions or protections provided herein with respect to any particular
27 Discovery Material.

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1 13. Nothing herein shall be construed to limit or restrict a party's use or
2 disclosure of its own Confidential or Highly Confidential Discovery Material for
3 any purpose. Nothing contained herein shall impose any restrictions on the use or
4 disclosure by a party of documents, materials or information designated as
5 Confidential or Highly Confidential Discovery Material obtained lawfully by such
6 party independently of any proceedings in this Action, or which:

7 a. was already known to such party by lawful means prior to
8 acquisition from, or disclosure by, the other party in the Action; and/or
9 b. is or becomes publicly known by lawful means and through no
10 fault or act of such party.

11 14. In the event additional parties join or are joined in this Action, they
12 shall not have access to Confidential or Highly Confidential Discovery Material
13 until the newly-joined party or its counsel has executed and, at the request of any
14 party, filed with the Court its agreement to be fully bound by this Protective Order
15 or an alternative protective Order entered by the Court.

16 15. It is the present intention of the parties that the provisions of this
17 Protective Order shall govern discovery and other pretrial and trial proceedings in
18 this Action. Nonetheless, each of the parties hereto shall be entitled to seek
19 modification of this Protective Order by first conferring with one another and, if still
20 believed necessary, by application to the Court in accordance with Local Rule 37.
21 No change in this Protective Order that adversely affects the protection of any
22 information, document, or thing produced or given by a non-party in this case shall
23 be made without giving appropriate notice to that non-party and an opportunity to be
24 heard by the Court. If the parties want to file the Joint Stipulation required by Local
25 Rule 37 under seal, the parties may file a Joint Stipulation to that effect or the
26 moving party may file an ex parte application making the appropriate request. The
27 parties must set forth good cause in the Joint Stipulation or ex parte application as to
28

1 why the Joint Stipulation or ex parte application, or portions thereof, should be filed
2 under seal.

3 16. The parties agree to be bound by the terms of this Protective Order
4 pending its entry by the Court or pending the entry of an alternative thereto which is
5 satisfactory to all parties.

6 17. The provisions of this Protective Order and this Court's jurisdiction to
7 enforce its terms shall survive the conclusion of this Action, unless this Action
8 proceeds to trial (in which case any documents or information that was designated
9 as confidential and/or kept and maintained pursuant to the terms of this Protective
10 Order that are introduced into evidence at trial become public absent a continuation
11 of this Protective Order by the Court pursuant to Paragraph 19 below). Within sixty
12 (60) days after receiving notice of the entry of an Order disposing of this Action
13 prior to trial, all persons having received Confidential or Highly Confidential
14 Discovery Material shall, upon written request of the Producing Party or its counsel,
15 return to counsel for the Producing Party such material and all copies thereof
16 (including summaries and excerpts) or destroy all such material and copies.
17 Counsel shall make reasonable efforts to ensure that any Consultants it has retained
18 abide by this provision. Counsel shall provide a certification that all Confidential or
19 Highly Confidential Discovery Material has been returned or destroyed pursuant to
20 this paragraph. Outside counsel of record in this Action shall be entitled to retain
21 court papers, deposition and trial transcripts, exhibits and attorney work product
22 (including court papers, transcripts, and attorney work product that contains
23 Confidential Discovery Material) provided that such counsel, and employees of such
24 counsel, shall not disclose any Confidential Discovery Material contained in such
25 court papers, transcripts, or attorney work product to any person or entity except
26 pursuant to a written agreement with the Producing Party. All material returned to
27 the parties or their counsel by the Court likewise shall be handled in accordance
28 with this paragraph.

1 18. During the pendency of this Action, any party objecting to the
2 designation of any Discovery Material or testimony as Confidential or Highly
3 Confidential Discovery Material may, after making a good-faith effort to resolve
4 any objection, move in accordance with Local Rule 37 for an Order vacating the
5 designation. While such an application is pending, the Discovery Material or
6 testimony in question shall be treated as it has been designated, either Confidential
7 or Highly Confidential Discovery Material, pursuant to this Protective Order. The
8 provisions of this Protective Order are not intended to shift the burden of
9 establishing confidentiality, which shall at all times remain with the Producing
10 Party.

11 19. If this Action proceeds to trial, then one or both parties may file an
12 application with the **District Judge** to show good cause for the continuation of this
13 Protective Order, in whole or in part, for some or all of the information that is
14 entered into evidence at trial and was designated as confidential and/or kept and
15 maintained pursuant to the terms of this Protective Order.

16 20. If any Receiving Party (a) is subpoenaed in another action, or (b) is
17 served with a demand in another action to which it is a party, or (c) is served with
18 any legal process by one not a party to this Action, seeking Discovery Material
19 which was produced or designated as “CONFIDENTIAL” or “HIGHLY
20 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” by someone other than the
21 Receiving Party, the Receiving Party shall give actual written notice, by hand or
22 facsimile transmission, within five (5) business days of receipt of the subpoena,
23 demand, or legal process to those who produced or designated the material
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
25 ONLY” to allow the Producing Party to object to its production to the extent
26 permitted by law. Should the person seeking access to the Confidential or Highly
27 Confidential Discovery Material take action against the Receiving Party or anyone
28 else covered by this Protective Order to enforce such a subpoena, demand or other

1 legal process, the Receiving Party shall respond by setting forth the existence of this
2 Protective Order. The Producing Party shall bear the burden and expense of seeking
3 protection in that court of its confidential material, and nothing in these provisions
4 should be construed as authorizing or encouraging a party in this action to disobey a
5 lawful directive from another court.

6 21. If information subject to a claim of attorney-client privilege or work-
7 product immunity is inadvertently or mistakenly produced, such production shall in
8 no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of
9 privilege or work-product immunity for such information. If a party has
10 inadvertently or mistakenly produced information subject to a claim of immunity or
11 privilege, upon written request made by the producing party within twenty-one (21)
12 days of discovery of such inadvertent or mistaken production, the information for
13 which a claim of inadvertent production is made, including all copies, shall be
14 returned within seven (7) business days of such request whether or not the receiving
15 party agrees with the claim. All copies of inadvertently or mistakenly produced
16 documents shall be destroyed, and any document or material information reflecting
17 the contents of the inadvertently produced information shall be expunged.

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1 EXHIBIT A
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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 CUSTOM LEATHERCRAFT MFG.
11 CO., INC., a California corporation,
12 Plaintiff,
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16 and DOES 1 to 5,
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25 Counterdefendant.

26 Case No. CV10-2399 JST (PLAx)

27 **UNDERTAKING RE
28 STIPULATED PROTECTIVE
ORDER**

29
30 **UNDERTAKING**

31 The undersigned hereby acknowledges that he or she has read the Protective
32 Order Governing The Protection And Exchange of Confidential Material in the
33 above-captioned action, entered on _____, 2011; that he or she
34 understands the terms thereof, that he or she agrees to be bound by its terms; and
35 that he or she consents to the jurisdiction of the United States District Court for the
36
37

1 Central District of California in all matters concerning the Protective Order and this
2 Undertaking.

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6

7 DATE Signature

8

9 Print Name and address:

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16 Employer or Business Affiliation.

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